

CONTACT FOR MEDIA: Ronda Sloan (502) 564-6098 or (502) 330-1804 (cell)

FOR IMMEDIATE RELEASE: January 7, 2003

Insurance Commissioner Announces Medical Malpractice Insurance Recommendations

FRANKFORT, Ky. - Following months of study, input from affected parties and a review of testimony from a public hearing, Kentucky Department of Insurance (DOI) Commissioner Janie A. Miller today announced a series of recommendations to address the medical malpractice insurance market in Kentucky.

In addition, Miller announced that companies selling this product in the state now will have to file their rates with the Department for review effective Jan. 15, 2003. This is known as "designating" the line.

"This will allow for closer monitoring of the market," Miller said. "Reviewing rates will allow us to take a more proactive approach and spot trends rather than just react to changes in the market. Appropriate regulatory review of rates will assure that rates are justified by insurers' costs in claims and other expenses. At the same time, we need to improve the reporting mechanisms to produce more accurate, useable data regarding medical malpractice claims and costs."

The announcement also includes a proposal with three other key elements:

1. Create a mandatory pre-litigation medical screening panel for each claimant;
2. Establish consumer safeguards on fees an attorney may receive from a medical malpractice award, and
3. Develop a continuing medical education effort to assist providers in reducing the incidence of malpractice.

A tort reform measure, the proposed mandatory screening panels would review cases of alleged malpractice negligence to determine if a case merits compensation and would encourage early resolutions prior to filing a lawsuit. In addition, the panels would encourage early withdrawal or dismissal of claims that are judged to be without merit. Under this proposal, no medical malpractice lawsuit could be filed in the Commonwealth unless this pre-litigation process had been followed or unless it was waived for good cause by all parties. The findings of the panels would be admissible as evidence in any subsequent court action.

-more-

"This independent, expert screening panel system should be easy to access and quick and inexpensive for patients to use. We believe this portion of the plan would be less expensive for all parties in the long run and relieve overburdened court dockets," Miller said.

Another part of the proposal would establish "fair and reasonable" limits on attorney fees that would safeguard the consumer. In general, the total contingent fee for the claimant's attorney would not exceed 33.3 percent of the first \$1 million and 20 percent of any amount in excess of \$1 million. If the amount recovered, less the attorney fee, was less than the total amount of the claimant's unpaid past medical expenses, the contingent fee would be reduced, except under certain circumstances. A final accounting of all attorney fees would be sent to the court for review and approval. If an attorney could show that the fee schedule would not provide adequate compensation for extraordinary services rendered, such as more than usual participation in time and effort, the attorney could apply to the court for approval of additional compensation.

The final component of the proposal calls on the Kentucky Medical Association and Kentucky Board of Medical Licensure, as well as state medical schools, professional provider association and oversight boards, to develop continuing medical education initiatives to help providers lower the incidence of malpractice. The goals of such initiatives would include promoting increased patient knowledge, cooperation and compliance with treatment protocols and might include educational programs designed to increase patient understanding of conditions and progression of disease states, goals of treatment, risks and side effects. Other examples could include improvements to medical documentation systems aimed at improving diagnosis and treatment of patients and ultimately the quality of care for Kentucky patients.

"The decision of whether to establish caps or limits on malpractice awards is not an insurance issue but is a matter of public policy that should balance the needs of citizens to receive redress for malpractice injuries against any negative impacts to the health care delivery system," Miller said. "We anticipate that award caps will be addressed by the Kentucky General Assembly and may require a constitutional amendment. This proposal is within our jurisdiction and can be done without constitutional amendments. Our proposal can be built upon by the legislature and we welcome its assistance."

-30-

NOTE TO REPORTERS, EDITORS: A complete copy of the DOI proposal is available upon request by calling 502-564-6098. It also will be posted on the DOI Web page at insurance.ky.gov.